IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.140 OF 2007

Nehemiah Lazar, ...Petitioner.

Versus

The Special Executive Magistrate
and Anr. ...Respondents.

....

Mr.S.A.Sawant, Advocate for the Petitioner.
Mr.S.R.Shinde, APP, for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 26th February, 2007.

P.C.:

1. Heard the learned Advocate for the petitioner and the learned APP for the State.

2. The petitioner is challenging initiation of chapter proceedings against him by the learned Special Executive Magistrate, Malad Division, Mumbai.

3. As only notice has been received by the petitioner in respect of the chapter proceedings, in my view, it would be appropriate that the petitioner replies to the same. The learned

Advocate for the petitioner states that the petitioner is 68 years old and the learned Special Executive Magistrate should not insist that the petitioner to remain personally present on the dates of hearing.

4. Mr.Shinde, the learned APP states that if an Advocate represents the petitioner on the dates before the learned Special Executive Magistrate, personal attendance of the petitioner will not be insisted upon, provided that on the date when the order is passed the petitioner undertakes to remain present.

5. Mr.Sawant states that the petitioner undertakes to remain present on the date when the order is passed. He further states that all the material on which reliance is placed by the learned Special Executive Magistrate may be furnished to the petitioner so that the petitioner can reply to the same by way of filing written submissions through his Advocate.

6. In this view of the matter, the learned Special Executive Magistrate shall give an

opportunity to the petitioner or his Advocate to prove his case including by producing documents and examining witnesses, if any. Needless to say that the Special Executive Magistrate shall consider the submissions made by the petitioner, documents produced by him and the evidence of the witnesses examined on behalf of the petitioner. Thereafter, the learned Special Executive Magistrate after hearing necessary parties shall pass appropriate orders. In case the petitioner is called upon to furnish bond or surety, five days time is given to the petitioner to furnish bond or surety.

7. Writ petition is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)